

## PUBLIC IMPROVEMENT CONTRACT

### Water Filtration Facility Granular Activated Carbon Expansion Project

THIS CONTRACT is made this 17 day of April, 2015, between City of Newport, hereinafter called Owner, and James W. Fowler Co., hereinafter called Contractor. In consideration of mutual covenants hereinafter set forth, the parties agree as follows:

1. **Work.** Contractor shall complete all work as specified in the contract documents, in conformance with all Owner public works design and construction standards, and in accordance with the documents and drawings provided for the Water Filtration Facility Granular Activated Carbon Expansion Project.
2. **Materials.** Contractor will furnish, provide and pay for all materials, supplies, labor, tools, equipment, water, lights, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.
3. **Contract Time.** The Work will be completed by Contractor within 90 days after the date of Owner's Notice to Proceed, unless the time for completion is extended otherwise by the Contract Documents or by written agreement of the parties.
4. **Contract Price.** Owner shall pay Contractor for performance of the Work in accordance with the Contract Documents in the amount of fifty-eight thousand two-hundred dollars (\$58,200.00).
5. **Compensation.** Owner will pay the Contract Price upon final completion and City's acceptance of Contractor's Work.
6. **Contract Documents.** The term "Contract" or "Contract Documents" means and includes the following:
  - a) Request for Competitive Quote;
  - b) Addenda (if any);
  - c) Contractor's submitted Quotation Form;
  - d) Public Improvement Contract;
  - e) ORS 279C Requirements (attached);
  - f) Notice of Award;
  - g) Notice to Proceed;
  - h) Change Orders (if any);

All Contract Documents are attached hereto, and incorporated herein by this reference. In the event of a conflict, this Contract will prevail over other Contract Documents as modified by any change orders, followed by ORS 279C requirements,

the Notice to Proceed, Owner Request for Competitive Quote, then Contractor's submitted Quotation Form, in that order of precedence.

7. **Materials and Equipment.** Materials and equipment shall be stored so as to ensure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
8. **Contractor's Representations.** In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - a) Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations which, in any manner, may affect cost, progress, or performance of the Work;
  - b) Contractor has studied carefully all reports, investigations, and tests of subsurface and latent physical conditions at the site affecting cost, progress, or performance of the Work which were relied upon in the preparation of the drawings and specifications;
  - c) Contractor has made or has caused to be made examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in (b) which it deems necessary for the performance of the Work, determination of the contract price, completing the building within the contract time in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes;
  - d) Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract Documents;
  - e) Contractor has given the Owner's representative written notice of all conflicts, errors or discrepancies which he has discovered in the Contract Documents and the written resolution thereof by the Owner's representative is acceptable to the Contractor.
9. **Insurance.** Before undertaking any work on the project, Contractor shall provide Owner with Certificates of Insurance including comprehensive general liability and other insurance as will provide protection for the claims set out below, which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether such performance is by Contractor or any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a) Claims under workers' compensation or other similar employee benefits;
- b) Claims for damages because of bodily injury, occupational sickness or disease or death of Contractor's employees;
- c) Claims for damages because of bodily injury, sickness, disease or death of any person other than Contractor's employees;
- d) Claims for damages covered by personal injury liability insurance, sustained by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor or by any other person for any other reason;
- e) Claims for damages other than to the Work itself because of injury or destruction of tangible property, including loss of use resulting therefrom;
- f) Claims for damages because of bodily injury or death of any person, or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The limits of such liability shall be as follows:

1) Comprehensive general liability	\$2,000,000
2) Automobile	\$1,000,000
i) Bodily injury	\$1,000,000
ii) Property Damage	\$1,000,000

Owner shall be named as an additional insured on the certificates of insurance. Such policies shall not be canceled or allowed to expire nor material changes permitted, until Contractor has provided at least 30 days written notice to Owner.

10. **Changes to the Work and Contract Amendments.** Changes to the Work, price and other contract amendments shall be in writing, signed by both parties and made in accordance with Owner Public Contracting Rules 137-049-0160 and 137-049-0910.
11. **Warranty.** This project is warranted against any and all failures for a period of one year from the date of completion. Contractor agrees to be responsible for all such repairs. If Contractor does not perform repairs within 30 days after notice provided by the Owner, the Owner may perform repairs and bill Contractor. Contractor shall be liable for payment of all such sums, as billed.

**12. Suspension of Work, Termination Delay.**

- a) If Contractor is adjudged as bankrupt or insolvent or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Contractor or for any of its property, or if it files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or applicable laws, or if it repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or if it repeatedly fails to make prompt payments to subcontractors for labor, materials, or equipment, or if it disregards laws, ordinances, rules, regulations, or orders of any public body having jurisdiction of the Work, or if it disregards the authority of the Owner's representative or if it otherwise violates any provision of the contract documents, then the Owner may, without prejudice to any other right or remedy, after giving the Contractor and its surety a minimum of five days' notice from delivery of the written notice, terminate the services of the Contractor and take possession of the Project and all materials, equipment, tools, construction equipment, machinery thereon owned by Contractor and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the Contractor. If the costs exceed such unpaid balances, the Contractor will pay the difference to the Owner. Such costs incurred by the Owner will be determined by the Owner and incorporated in a change order.
- b) Where the Contractor's services have been so terminated by the Owner, the termination shall not affect any right of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of monies by the Owner due the Contractor will not release the Contractor from compliance with the Contract Documents.
- c) After five days from delivery of written notice to the Contractor, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Project and terminate the Contract. In such case, the Contractor shall be paid for all work executed and any expense sustained plus reasonable profit.

13. **Indemnification.** To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, and defend Owner and its representatives, officers, directors, and employees from any loss or claim made by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from Contractor's negligent performance and provision of materials and/or fault of Contractor, its employees, representatives, or subcontractors. If the loss or claim is caused by the joint concurrent negligence or other fault of Owner and Contractor, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Contractor shall defend Owner from claims covered under this indemnification section at Contractor's sole cost and expense until such time (1) as an arbitration panel or a court of competent jurisdiction determines that Owner is liable in whole or in part for the loss or claim caused by Owner's negligence or (2) until Owner and Contractor mutually agree to allocate the liability.

**14. Miscellaneous.**

- a) No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the parties sought to be bound; and specifically but without limitation, monies which may become due and monies which are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law) and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- b) This Contract shall be binding upon all parties hereto and their respective partners, successors, heirs, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

**15. Arbitration.** If any disputes, disagreements or controversies arise between the parties pertaining to the interpretation, validity, rescission or enforcement of this Contract, the parties shall, upon the request of either party, submit such dispute to binding arbitration. Except as otherwise provided in this Contract, arbitration shall be requested by delivering to the other party a written request for arbitration. Within 10 days of receipt of such request, the parties shall select a mutually agreeable arbitrator and designate mutually agreeable rules of arbitration. If the parties cannot agree upon an arbitrator within 10 days, an arbitrator may be appointed by the Circuit Court for the County in which Owner is located, upon the request of either party submitted in accordance with Oregon's Uniform Arbitration Act, ORS 36.600, et seq. If the parties have not designated mutually agreeable rules of arbitration at such time as the arbitrator is appointed, the arbitrator shall have the discretion to adopt rules for the arbitration, and the arbitrator's decision shall be binding upon the parties. All arbitration shall take place in Lincoln County, Oregon unless the parties both agree to have the matter arbitrated elsewhere.

**16. Attorney Fees.** If suit, action or arbitration is brought either directly or indirectly to rescind, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the costs and disbursements. Further, if it becomes necessary for Owner to incur the services of an attorney to enforce any provision of this Contract without initiating litigation, Contractor agrees to pay Owner's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by losing party.

THIS CONTRACT is effective on the 17 day of April, 2015.

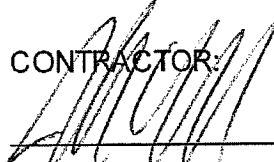
OWNER:



Signed by:

Spencer R. Nebel, City Manager

CONTRACTOR:



Signed by:

Name: John Fowler

Title: VP

Address for giving notices:

City of Newport

169 NW Coast Highway

Newport, OR 97365

Address for giving notices:

James W. Fowler Co  
12775 Westview Drive  
Dallas, OR 97338



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/08/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Parker, Smith & Feek, Inc. 2233 112th Avenue NE Bellevue, WA 98004	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b> 425-709-3600	<b>FAX (A/C, No):</b> 425-709-7460
<b>INSURED</b> James W. Fowler Co. 12775 Westview Drive Dallas, OR 97338	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Zurich American Insurance Co.	
	<b>INSURER B:</b> American Guarantee & Liability Ins.	
	<b>INSURER C:</b> National Union Fire Insurance Co. of	
	<b>INSURER D:</b>	
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X	GLA286250312	11/1/2014	11/1/2015	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 10,000
	GEN'L AGGREGATE LIMIT APPLIES PER:					PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC					GENERAL AGGREGATE \$ 2,000,000
						PRODUCTS - COMP/OP AGG \$ 2,000,000
						\$
B	AUTOMOBILE LIABILITY	X	GLA286250312	11/1/2014	11/1/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS					\$
	<input type="checkbox"/> NON-OWNED AUTOS					\$
C	UMBRELLA LIAB	X	BE035459663	11/1/2014	11/1/2015	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB					AGGREGATE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE					\$
	DED <input checked="" type="checkbox"/> RETENTION \$ \$10,000					
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A				WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)					E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Re: Water Filtration Facility Granular Activated Carbon Expansion Project.

City of Newport is included as additional insured per attached endorsement U-GL-1175-F CW 04 13 (GL), U-CA-424-F CW 04 14 (Auto) and 86395 12 13 (Excess).

**CERTIFICATE HOLDER****CANCELLATION**

City of Newport 169 NW Coast Highway Newport, OR 97365	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



**ZURICH**

## Coverage Extension Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem	Return Prem.
GLA-2862503-12	11/01/2014	11/01/2015	11/01/2014	73791000	Incl.	N/A

### THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form**  
**Motor Carrier Coverage Form**

#### A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

#### B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.



### C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

### D. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the **Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph 2.b. in the **Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

### E. Lease or Loan Gap Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

#### **Lease Or Loan Gap Coverage**

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
  - (1) Overdue lease or loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Security deposits not returned by the lessor;
  - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
  - (5) Carry-over balances from previous leases or loans.

### F. Towing and Labor

Paragraph A.2. of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

### G. Extended Glass Coverage

The following is added to Paragraph A.3.a. of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

### H. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

#### **Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
  - (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
  - (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".
- However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

**I. Personal Effects Coverage**

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

**Personal Effects Coverage**

- a. We will pay up to \$750 for "loss" to personal effects which are:
  - (1) Personal property owned by an "insured"; and
  - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
  - (1) The reasonable cost to replace; or
  - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
  - (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
  - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
  - (3) Paintings, statuary and other works of art.
  - (4) Contraband or property in the course of illegal transportation or trade.
  - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

**J. Tapes, Records and Discs Coverage**

1. The Exclusion in Paragraph B.4.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph 1.a. **Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

#### **K. Airbag Coverage**

The Exclusion in Paragraph B.3.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

#### **L. Two or More Deductibles**

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **M. Physical Damage – Comprehensive Coverage – Deductible**

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000 or the deductible shown in the Declarations, whichever is greater.

#### **N. Temporary Substitute Autos – Physical Damage**

1. The following is added to **Section I – Covered Autos**:

##### **Temporary Substitute Autos – Physical Damage**

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
2. Repair;
3. Servicing;
4. "Loss"; or
5. Destruction.

2. The following is added to the Paragraph A. **Coverage** Provision of the **Physical Damage Coverage** Section:

##### **Temporary Substitute Autos – Physical Damage**

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

#### **O. Amended Duties In The Event Of Accident, Claim, Suit Or Loss**

Paragraph a. of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any

agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

**P. Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

**Q. Employee Hired Autos – Physical Damage**

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

**R. Unintentional Failure to Disclose Hazards**

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

**S. Hired Auto – World Wide Coverage**

Paragraph **7a.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

**T. Bodily Injury Redefined**

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

**U. Expected Or Intended Injury**

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

**Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**V. Physical Damage – Additional Temporary Transportation Expense Coverage**

Paragraph **A.4.a. of Section III – Physical Damage Coverage** is replaced by the following:

**4. Coverage Extensions**

**a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

**W. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto**

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

**X. Return of Stolen Automobile**

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.

## Additional Insured – Automatic – Owners, Lessees Or Contractors



Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer No.	Add'l. Prem.	Return Prem.
GLA-2862503-12	11/01/2014	11/01/2015	11/01/2014	73791000	Incl.	N/A

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**Named Insured:** James W. Fowler Co.

**Address (including ZIP Code):** PO Box 489, Dallas, OR 97338

This endorsement modifies insurance provided under the:

### **Commercial General Liability Coverage Part**

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations or "your work" as included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:**

This insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

C. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit of Section IV – **Commercial General Liability Conditions:**

The additional insured must see to it that:

1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

D. For the purposes of the coverage provided by this endorsement:

1. The following is added to the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
  - b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.
2. The following paragraph is added to Paragraph 4.b. of the Other Insurance Condition of Section IV – **Commercial General Liability Conditions:**

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

E. This endorsement does not apply to an additional insured which has been added to this policy by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

F. With respect to the insurance afforded to the additional insureds under this endorsement, the following is added to Section III – **Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Paragraph A. of this endorsement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

**Endorsement # 5**

**This endorsement effective 12:01 a.m. November 1, 2014**

**Forms a part of Policy No: BE 035459663**

**Issued to: JAMES W. FOWLER CO.**

**By: NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.**

**Commercial Umbrella Liability Policy with CrisisResponse®**

**Additional Insured Endorsement -- Primary and Non-Contributory**

This policy is amended as follows:

**Section VII. DEFINITIONS**, Paragraph M. is amended to include the following additional provision:

**Insured means:**

Any person or organization for whom you have agreed in writing in a contract or agreement that such person or organization is an additional insured on your policy, but only if such person or organization is included under the coverage provided by **Scheduled Underlying Insurance**. Such person or organization is an additional insured only with respect to liability arising out of **Your Work** at the location designated.

This provision does not apply to liability arising out of the sole negligence of such person or organization for its own acts or omissions or those of its employees or anyone else acting on its behalf. Coverage afforded to these additional insured parties, when required by written contract, will be primary to, and non-contributory with, any **Other Insurance** purchased and issued to that person or organization.

All other terms, definitions, conditions, and exclusions of this policy remain unchanged.



\_\_\_\_\_  
Christopher G. Kopser  
Authorized Representative, or  
Countersignature (where required)





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
4/7/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Woodruff-Sawyer Oregon, Inc. 1001 SW 5th Avenue, Suite 1000 Portland OR 97204		<b>CONTACT NAME:</b> Kimberly Schleiger <b>PHONE (A/C, No, Ext):</b> 503-416-7180 <b>E-MAIL ADDRESS:</b> kschleiger@wsandco.com <b>FAX (A/C, No):</b> 503-243-1815		
<b>INSURED</b> James W Fowler Co. 12775 Westview Drive Dallas OR 97338  JAMEWFO-01		<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
		INSURER A :SAIF Corporation		36196
		INSURER B :		
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

## COVERAGES

CERTIFICATE NUMBER: 1262944511

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  <input type="checkbox"/> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COMP/OP AGG	\$
								\$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS  <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> EXCESS LIAB  <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE	\$
								\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	812482	10/1/2014	10/1/2015	X WC STATUTORY LIMITS	OTHER
							E.L. EACH ACCIDENT	\$1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$1,000,000
							E.L. DISEASE - POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Operations of the Named Insured subject to the terms, conditions and exclusions of the policy issued by the Insurance Company.

## CERTIFICATE HOLDER

## CANCELLATION

City of Newport  
169 NW Coast Highway  
Newport OR 97365

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Kimberly Schleiger*